IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JOHDPUR
::::

JUDGMENT

V.D. Vyas Vs. State of Rajasthan & Anr.

D.B. CIVIL SPECIAL APPEAL (w) NO.201/1994 AGAINST THE ORDER DATED 7.3.1994 PASSED BY THE LEARNED SINGLE JUDGE IN S.B. CIVIL WRIT PETITION NO.2777/1993.

DATE OF JUDGMENT :: 13.7.2006

PRESENT

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.J.P. Joshi, for the appellant.
Mr.Rameshwar Dave, Dy.GA, for the respondents.

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BY THE COURT (Per Hon'ble the Chief Justice):

This special appeal is directed against the order of the learned Single Judge dated 7th March, 1994 in S.B. Civil Writ Petition No.2777/1993 dismissing the writ petition of the appellant. The appellant had filed the writ petition seeking in effect and substance direction not to retire him before 30th June, 1995, and if for any reason he is so retired, to take him back and allow him to continue upto 30th June,1995 with all consequential benefits.

The case of the appellant is that he was appointed as Secretary, Municipal Board, Balotra on 29.1.1957. He was transferred to Municipal Board, Merta where his service book was prepared in which his date of birth was mentioned as 12th June, 1937 on the basis of birth certificate issued by City Magistrate, Jodhpur. On 6th January, 1993 he was informed that he shall be retiring from service on attaining the age of superannuation i.e. 58 years on 30th June, 1993. He made representation and finally filed the writ petition on 14th June, 1993 seeking directions as aforesaid.

In the reply the respondents stated that the relevant entry in the photocopy of the service book produced by the appellant regarding the date of birth was forged and there were signs of erasing and over-writing. Therein the appellant was shown to have passed Intermediate Examination from the Board of Secondary Education, Ajmer in 1956 when as a matter of fact, the Board had not been constituted. The respondents also took the plea that Goverdhan Das who allegedly verified the entry regarding date of birth in the service book was not competent to do so. The respondents pointed out that in the writ petition no.5894/1992 which the appellant had preferred challenging an order of transfer, he had taken a specific plea that he was due to retire in June, 1993 which, according to the respondents, amounts to a clear admission that his date of birth is 12th June, 1935.

Learned Single Judge upheld the stand of the respondents and

dismissed the writ petition and the appellant has come to the Division Bench in this appeal.

Shri J.P. Joshi, learned counsel for the appellant submitted that superannuation of the Government servant depends on the date of birth mentioned in the service book and he cannot be retired earlier. The entry in service book cannot be altered without notice as held by the Supreme Court in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei & Ors, AIR 1967 SC 1269. Counsel submitted that there is no interpolation in the service book produced by the appellant and in any view, the respondents failed to produce the original service book despite direction to that effect for which adverse inference may be drawn against them. Counsel also challenged the finding of the learned Single Judge regarding the appellant's filing civil suit apart from the writ petition as error of record. The learned Single Judge, according to the counsel, committed further error in holding that the case involved disputed questions of facts. In this regard also he placed reliance on the decision in Dr. (Miss) Binapani Dei (supra).

The submission that superannuation of an employee depends on the date of birth as recorded in service book is no doubt well founded. It is ordinarily so. It is also true that no alteration in service book can be made without notice to the person concerned. The case of the appellant, however, is founded on a photocopy which has been disbelieved by the learned Single Judge and, in our opinion, for good

reasons. As mentioned above, as per the relevant entry in the service book, the appellant is shown to have passed intermediate Examination from the Secondary Education Board, Ajmer in 1956 whereas the Secondary Education Board was established under the Rajasthan Secondary Education Act only in 1957. Section 5 of the Act provides that the Board shall have its head-quarters at a place to be notified by the State Government in the Official Gazette and Ajmer was notified as the place of head-quarter of the Board of Secondary Education under notification dated 27th August, 1957 published in the Official Gazette dated 12th Sept., 1957. In other words, there was no Board of Secondary Education at Ajmer in 1956. It is, therefore un-understandable as to how the appellant could have passed intermediate Examination from the Board of Secondary Education, Ajmer in 1956. This aspect of the case has not been explained either in the pleadings or in the oral submissions.

The date of birth is ordinarily mentioned in the service book on the basis of matriculation certificate or certificate of an equivalent examination, but as seen above, on the own saying of the appellant, 12th June, 1937 was mentioned in the service book as his date of birth on the basis of birth certificate issued by the City Magistrate, Jodhpur. The appellant was asked to produce the matriculation certificate, which he did not produce. Having apparently withheld a relevant document, which could conclude the matter one way or other, adverse inference

can be drawn against him.

Two more circumstances relied upon by learned Single Judge are that the appellant had himself mentioned 12th June, 1935 as his date of birth in the Annual Performance Appraisal Reports (APARs) for the years 1975-76, 1976-1977 and 1978-79. Besides the APARs, by pleading that he was due to retire on reaching age of superannuation in June, 1993 as a ground to challenge the order of transfer in writ petition no.5894/1992, he virtually admitted that his date of birth was 12th June, 1935. These circumstances were pointedly put to learned counsel but he failed to wriggle out.

It is true, as contended by learned counsel, that service book is the basic document and entry regarding date of birth therein would determine the date of superannuation of the person concerned, but it does not mean that other documents, which are parts of the service records cannot be taken into account. The definite case of the respondents is that the service book of the appellant was missing. Though not suggested on behalf of the respondents, production of alleged photocopy thereof by the appellant containing spurious entries cannot be mere co-incidence. There being inherent contradictions in the service book as regards the date of birth, the photocopy cannot be accepted on its face value. The ratio of decision in Dr. (Miss) Binapani (supra) can be applied in cases of 'alteration' of the date of birth. Where the employer is of the view that date of birth is not correctly

mentioned in the service book it is open to the employer as it is open to the employee, to correct the mistake, and this can be done only after notice and giving opportunity of hearing to the person concerned. The present case not being a case of alteration, reliance on the decision appears to be totally misconceived.

Not being a case of alteration, it will follow that the appellant raised the dispute about the date of birth when he was on the verge of retirement. He was informed on or about 6.1.1993 about his pending retirement on 30th June, 1993 where after he made representation and filed the writ petition on 14th June, 1993 i.e. 16 days prior to his retirement. It is settled by catena of decisions of the Apex Court that a government servant can apply for correction of date of birth within the period prescribed under the rules, if any, and in absence of rules, within a reasonable period, but certainly not when he is at the verge of retirement. It appears that a seniority list was circulated on 3rd November, 1981 in which too the date of birth of the appellant as mentioned as 12th June, 1935. In that view of the matter, the appellant cannot contend that he was not aware of the error at least in November, 1981, if not earlier. It is not his case that he was unaware of the said seniority list dated 3rd November, 1981. If that is so, raising of dispute at the fag end of the service career when he was about to retire, cannot be entertained. The following observations made in Secretary & Commissioner, Home Department & Ors Vs. R. Kirubakaran,

1994 Supp (1) SCC 155, will bring home the point :

> "An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or

> the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior."

Reference may also be made to (1994) 6 SCC 302-State of T.N. VS. T.V. Venugopalan, (1995) 2 SCC 82-Chief Medial Officer VS. Khadeer Khadri, (1995) 4 SCC 172-Burn Standard Co.Ltd. & Ors. Vs. Dinabandhu Majumdar & Anr., (1997) 4 SCC 647-Union of India Vs. C. Rama Swamy & Ors, (2000) 8 SCC 696-G.M.Bhaarat Coking Coal Ltd., West Bengal Vs. Shib Kumar Dushad & Ors. and (2003) 6 SCC 483-State of U.P. & Ors. Vs. Gulaichi. In these decisions, the practice of approaching court/tribunal raising dispute about the date of birth and challenging the correctness of the entry and seeking direction to continue in employment, and entertaining such dispute by the courts/tribunals was deprecated.

In the above premises, We find no error in the order of the learned Single Judge rejecting the claim of the appellant and dismissing the writ petition.

Shri J.P. Joshi counsel for the appellant stated that on account of dispute about date of birth and pendency of the writ petition/appeal, the retiral dues of the appellant have not been finalized. If it is true that the appellant has not been paid his retiral dues, we would direct the concerned authorities to immediately take steps to finalize the

pension and other retiral dues of the appellant treating him to have retired on 30th June, 1993 and pay him his rightful dues at the earliest preferably within four months from receipt of a copy of this order.

Subject to above directions, the appeal is dismissed.

(MOHAMMAD RAFIQ),J. **(S.N. JHA), CJ.**

c.p.goyal/-